

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BILL ADAM SANDERS,

Petitioner,

v.

CASE NO. 2:15-CV-2304
JUDGE JAMES L. GRAHAM
MAGISTRATE JUDGE KEMP

CHILLICOTHE CORRECTIONAL
INSTITUTION,

Respondent.

OPINION AND ORDER

On June 23, 2015, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the rules Governing Section 2254 Cases in the United States District Courts, recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be transferred to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition. (ECF No. 2.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF No. 3.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (ECF No. 3) is **OVERRULED**. The *Report and Recommendation* (ECF 2) is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition.

Petitioner objects to the Magistrate Judge's recommendation. He acknowledges that this is not his first federal habeas corpus petition relating to his March 1995

convictions in Pickaway County on three counts of attempted murder, but argues that this action does not constitute a successive petition because he previously challenged his commitment and he now challenges the imposition of sentence.

In his prior federal habeas corpus petition, Petitioner raised claims that he is being held under “void commitment papers” because the trial court denied his motion for a change of venue and he is actually innocent. He also claimed that the judgment is void because he was denied his right to a speedy trial, the prosecutor failed to disclose exculpatory evidence, and he is innocent of the charges. *See Sanders v. Warden, Chillicothe Correctional Institution*, Case No. 2:12-cv-00423.¹ No objections were filed, and on June 8, 2012, this Court dismissed that action as untimely. *Id.* Petitioner now asserts that his sentence violates Ohio’s law on allied offenses of similar import. Thus, both of these cases challenge the validity of Petitioner’s convictions and sentence. As noted by the Magistrate Judge, Petitioner’s claim relating to alleged sentencing errors could have been, but was not, raised by Petitioner in his prior federal habeas corpus petition. This action thereby constitutes a successive petition.

Therefore, Petitioner’s *Objection* (ECF No. 3) is **OVERRULED**. The *Report and Recommendation* (ECF 2) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Date: July 13, 2015

s/James L. Graham

JAMES L. GRAHAM
United States District Judge

¹ Petitioner indicates that his prior federal habeas petition was filed under Case No. 08-cv-423, but this appears to have been an error.